Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Core Communications, Inc. Petition for Forbearance	WC Docket No. 03-171

REPLY OF VERIZON

The CLEC supporters of Core's request for forbearance[1] merely repeat the legally incorrect and factually unsupported arguments made by Core in its petition. They do not add anything to the record that remedy the petition's the fatal flaws or could possibly lead the Commission to grant it. These commentors have no answer for the fact that the Commission found that the compensation system to which Core wants the Commission to return created "an opportunity for regulatory arbitrage and lead[] to uneconomical results"[2] that are inconsistent with the public interest. Nor have they offered anything that could cause the Commission to change its findings that the old compensation system "distorts competition,"[3] encourages carriers "not [to] offer[] viable local telephone competition,"[4] "hinder[s] the development of efficient competition in the local exchange and exchange access markets"[5] and "undermines the operation

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1 Xspedius, Telnet and Pac-West. While WorldCom filed "comments," it merely urges the Commission to act on the remand of the *ISP Order* and does not support Core's request for forbearance.

2 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 ¶ 21 (2001) ("*ISP Order*").

3 *ISP Order* ¶ 5.

4 *ISP Order* ¶ 21.

5 *ISP Order* ¶ 95.

of competitive markets."[6] The order Core wants is both bad for competition and inconsistent with the public interest and, as such, may not be adopted under section 10.

The Consumer Advocate Division of the West Virginia PSC (CAD) does make a number of arguments not found anywhere else. These, however, generally reflect a misunderstanding of the purpose and effect of the Commission's rules and do not support forbearance either.

The CAD's position here is strange in light of the West Virginia rules on compensation for ISP-bound traffic, rules which the CAD presumably wants reinstated in place of the Commission's. Under the system that the West Virginia PSC adopted in 1999, CLECs actually received *less* compensation than they got under the Commission's rules that replaced it, in that the PSC established a 3:1 presumption like the one later adopted by the Commission but without the transitional interim compensation for traffic above that level.[7] At the same time, the state commission said that CLECs could seek to negotiate with Verizon for compensation for ISP-bound calls separate from the compensation required by section 251(b)(5), but no West Virginia CLEC did so before the *ISP Order* became effective.

CAD spends much of its filing railing at Verizon's compliance with the Commission's "rate offer and mirroring rule" and at the rule itself. It says, for example, that Verizon's offer under that rule "was not valid since it apparently was made by industry-wide letter authored by the state operating company's parent rather than by the operating company itself on a state-specific basis."[8] The Commission, however, ruled last year that Verizon appropriately offered to

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[6] *ISP Order* ¶ 71.

[7] The state commission held that "the competitive carrier is not entitled to [reciprocal] compensation for any traffic exceeding this factor of 3" unless it demonstrates that the traffic is local rather than ISP-bound. *Bell-Atlantic-West Virginia, Inc.*, Case No. 99-0426-T-P, Order at 8 (WV PSC Oct. 19, 1999).

[8] CAD at 7 & 12 n.11.

mirror rates in Virginia, using the very procedure the CAD says was "not valid" — "We agree with Verizon that it has satisfied the mirroring rule through its letter offers, sent to interconnecting carriers in Virginia, to exchange all traffic subject to section 251(b)(5) at the capped rates."[9]

The CAD goes on to complain about the "rate offer and mirroring rule" itself. It says that the Commission's rule was "an open invitation for ILECs to take unilateral action to deny CLECs compensation to which they are entitled"[10] and "gave ILECs the sole power to determine which rates should apply."[11] The CAD misunderstands what the "rate offer and mirroring rule" is all about. The rule required Verizon to *offer* to both receive and pay the Commission's interim rate for ISP-bound traffic for both ISP-bound traffic and section 251(b)(5) traffic as a prerequisite to implementing the *ISP Order* regime. But Verizon could not to force any CLEC to accept that offer. The purpose of the rule (as its name suggests) was ensure that each CLEC had the option of paying the same rate that the ILEC receives for ISP-bound traffic — to prevent an ILEC from paying a CLEC compensation at the ISP-bound rates while collecting from the CLEC at the higher reciprocal compensation rate. As the Commission explained, it was to "ensure[] that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic," because the Commission did not want "to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they

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[9] *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039 ¶ 249 (2002).

[10] CAD at 6.

[11] CAD at 13.

are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed."[12]

The CAD also says that the "rate offer and mirroring rule" extends the Commission's rate-making into an area in which the Commission has no jurisdiction. Thus, it claims that "the Commission 'boot-strapped' its intercarrier compensation mechanism for ISP-bound traffic, traffic over which it asserted dubious jurisdictional claims, to establish compensation rates for all Section 251(b)(5) traffic, including local traffic over which state commissions generally have jurisdiction."[13] And, it argues that, to make matters worse, "the Commission's 'mirroring rule' also vested ILECs with sole discretion whether to make the interim intercarrier compensation rates apply to all Section 251(b)(5) traffic."[14] Again, the CAD has it wrong. First, the Commission did not set rates for local traffic because its rate mirroring approach was not imposed on the CLECs — they got to choose whether to take the offer or not. Thus, the "rate offer and mirroring rule" does not give the ILEC "sole discretion" as to whether these rates apply to all traffic — the ILEC must only make the offer, an offer which each CLEC may accept or reject. In addition, the Commission does, of course, have authority to establish rules in connection with the provision of section 251, including section 251(b)(5), including rules concerning rate-setting methodology.[15] The "rate offer and mirroring rule" is just such a permissible rule.

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12 *ISP Order* ¶ 89.

13 CAD at 5-6.

14 CAD at 6.

15 *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 384-85 (1999).

The CAD claims that the record in the West Virginia section 271 proceeding shows that Verizon has violated the Commission's order relating to compensation for ISP-bound traffic.[16] While this claim is irrelevant to the forbearance petition, it is also wrong. The CAD complains that Verizon "has not paid any compensation for ISP-bound traffic over the Commission's 3:1 ratio but which was within the growth caps established by the Commission."[17] However, CLECs are entitled to the Commission's interim compensation for traffic in excess of 3:1 *only if* they would have been entitled to compensation for such traffic in the first quarter of 2001.[18] As the Commission explained, its transitional rates for traffic over 3:1 "have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic)."[19] Under the West Virginia commission's 1999 order, of course, CLECs were entitled to no reciprocal compensation for traffic in excess of 3:1, and they were, therefore, entitled to nothing for that traffic under the Commission's rules either.

The CAD forgets the state commission's 1999 order in another context too. It challenges the Commission's conclusions in the *ISP Order*, arguing that "the actual experience with competition does not suggest that CLECs engaged in regulatory arbitrage" because "West Virginia adopted a CPNP regime in early 1997, with fairly high reciprocal compensation rates" and "CLECs did not flock to the state to grab ISPs, soak the dominant ILEC for reciprocal compensation, and use this windfall to rapidly build market share or profits."[20] Of course,

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16 CAD at 7, 10.

17 CAD at 7.

18 *ISP Order* ¶ 78.

19 *ISP Order* ¶ 8.

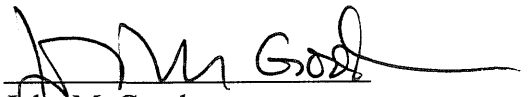
20 CAD at 16.

whatever happened in 1997, by 1999 the PSC had adopted rules of its own to stop the same "regulatory arbitrage" the Commission acted to curtail in 2001.

Conclusion

Nothing in the CAD's comments, or those of any other commentor, provides any basis for the Commission to grant Core's petition, and it should be denied.

Respectfully submitted,



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